

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

|                          |   |                        |
|--------------------------|---|------------------------|
| JOSEPH H. BROWN,         | ) |                        |
|                          | ) |                        |
| Petitioner,              | ) |                        |
| v.                       | ) | Civil Action           |
|                          | ) | No. 05-3135-CV-S-ODS-H |
| ROBERT McFADDEN, Warden, | ) |                        |
| Respondent.              | ) |                        |

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE**

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's allegations are without merit, it must be recommended that he be denied leave to proceed in forma pauperis.

Petitioner asserts that his custody classification was incorrectly computed by the Bureau of Prisons ["BOP"] because incidents that occurred approximately 10 and 15 years ago were improperly used to determine his custody classification. He seeks removal of the incidents from his custody classification and correction of his current custody classification.

Respondent contends that the BOP policy in determining a custody classification takes into consideration an inmate's entire background of criminal violence. In this case, it is asserted that petitioner's criminal history includes a conviction for possession of marijuana, disturbing the peace, possession of a controlled substance, unlawful use of a weapon, and driving under the influence and inflicting bodily injury. Because the Supreme Court, in Moody v. Daggett, 429 U.S. 78, 88 (1976), has established that the BOP's prison classification system pursuant to 18 U.S.C. § 4081, does not confer a protected right, respondent asserts that the classification system is entirely within the

discretion of prison officials.

A review of the record indicates that petitioner has failed to state a constitutional violation regarding his custody classification. The law is clear that inmates do not have a constitutional right to a particular prison classification, and that this is a matter within the discretion of the BOP. Carney v. Houston, 33 F.3d 893, 984-95 (8<sup>th</sup> Cir. 1994). Therefore, it will be recommended that the petition for writ of habeas corpus be dismissed without prejudice.

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England  
JAMES C. ENGLAND, CHIEF  
United States Magistrate Judge

Date: 4/20/06